



Gatwick Airport Northern Runway Project

Note on Acquisition of Special Category Land and Provision of Replacement Open Space – Tracked Version

Book 10

VERSION: 2.0

DATE: AUGUST 2024

Application Document Ref: 10.30

PINS Reference Number: TR020005

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1 Acquisition of special category land

1.1. Purpose of this document

1.1.1 At CAH1 the Joint Legal Authorities ("JLAs") raised comments regarding the Applicant's approach to the compulsory acquisition of special category land and provision of replacement land and the Applicant agreed to submit a note into the examination on that topic. This note [was originally submitted at Deadline 4 \[REP4-041\] and](#) explains the Applicant's approach and sets out:

- the legal basis under sections 131 and 132 of the Planning Act 2008 (the "**2008 Act**") for the DCO not to be subject to special parliamentary procedure (Section 2);
- the justification for the Applicant's approach to provision of replacement open space in article 40 (special category land) of the draft DCO (Section 3); and
- [how the Applicant's proposed replacement **land-open space** meets the legal and policy tests for such land \(Section 4\).](#)

▪ [1.1.2 Following further discussions with the JLAs throughout the examination, at Deadline 7 the Applicant revised the specific limb of section 131 of the 2008 Act on which it proposes to rely in respect of the permanent acquisition of special category land such that the DCO is not subject to special parliamentary procedure. This note was updated at the request of the Examining Authority and re-submitted at Deadline 9.](#)

2 Legal basis under sections 131 and 132 of the 2008 Act

2.1. Proposed acquisition of open space land

2.1.1 Sections 131 and 132 of the 2008 Act apply where a DCO authorises the compulsory acquisition of land, or rights over land, which is part of a common, open space or fuel or field garden allotment. Such an order is subject to special parliamentary procedure ("**SPP**") unless the Secretary of State is satisfied that an exception set out in those sections applies.

2.1.2 The Applicant's **draft DCO [REP3-006]** seeks compulsory acquisition powers over several plots of land that the Applicant has identified as open space land. This identification process has been undertaken on a precautionary and expansive basis – the Applicant has had reference to the relevant local planning authorities' designations of land within their boundaries and has adopted these as determinative of open space land, even where the Applicant has noted that the recreational use of these plots appears minimal or non-existent and where these designations appear to contradict the current ownership and use of the land.

2.1.3 For example, many of the plots of land which fall within Reigate and Banstead Borough Council ("**RBBC**")'s designation of urban open space along the southern edge of Riverside Garden Park are owned by National Highways and fall within the highway boundary as highway embankment and toe ditch. The plots of land designated as urban open space to the south-east of the Longbridge Roundabout comprise a wooded area separated from Riverside Garden Park by the

River Mole and only accessible by negotiating a step earth bank from a gate on the A23 Brighton Road.

2.1.4 This notwithstanding, the Applicant wishes to ensure that there is no perceived loss of open space for the benefit of the public and has committed to provide replacement open space of a quantity exceeding the total quantity of designated open space proposed to be permanently acquired (1.95 hectares (ha) as against 1.16 ha of designated open space land proposed to be permanently acquired).

2.2. Application of the 2008 Act

Open space land to be permanently acquired

2.2.1 The present ownership of the land identified as open space land and proposed to be permanently acquired and the proposals for the ownership and management of the replacement open space once laid out now agreed between the Applicant and the JLAs means that the application of sections 131 and 132 of the 2008 Act requires explanation.

2.2.2 Section 131(4) provides an exception to SPP where:

"(a) replacement land has been or will be given in exchange for the order land; and

*(b) the replacement land **has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land.**" (emphasis added)*

2.2.3 As explained above, replacement land-open space is proposed to be provided in respect of all open space land sought to be permanently acquired. However, that replacement land-open space cannot be vested in the same ~~variety of~~ landowners that currently own the designated open space proposed to be permanently acquired. ~~For example~~ In some cases this is because it would not be appropriate for that landowner to be vested with replacement open space – e.g. – it would not be appropriate for a landowner such as National Highways to own and manage a small portion of land to be laid out as recreational open space and the Applicant considers it unlikely that National Highways would wish to undertake such a role. As regards special category land in local authority ownership (primarily RBBC), following discussions with the JLAs, they have communicated that they do not wish to be vested with the replacement open space (see e.g. the JLAs' Consolidated submissions on the draft Development Consent Order [REP8-163]).

2.2.4 As a result, the Applicant cannot rely ~~solely~~ upon section 131(4) in respect of ~~all of~~ the designated open space land proposed to be permanently acquired as ~~the it cannot provide~~ replacement land ~~will not be~~ that is "vested in the prospective seller" [i.e. the variety of landowners] because this is resisted by the relevant landowners.

~~2.2.5~~ Instead, GAL considers that ~~the following exceptions are applicable:~~

~~Open space land owned by RBBC and proposed to be permanently acquired~~

~~2.2.6~~ For open space land currently owned by RBBC and proposed to be permanently acquired, section 131(4) applies. Replacement land will be vested in RBBC after having been laid out in accordance with the open space delivery plan and relevant landscape and ecology management plan(s) pursuant to article 40 (special category land) of the draft DCO.

~~Open space land owned by other landowners and proposed to be permanently acquired~~

~~2.2.72.2.5 For open space land currently owned by landowners other than RBBC (National Highways, Surrey County Council, West Sussex County Council and unknown landowners) and proposed to be permanently acquired, section 131(5) applies. This provides an exception to SPP where:~~

~~"(a) the order land does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and~~

~~2.2.82.2.6 (b) the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public."~~

~~2.2.92.2.7 These plots of special category land to be permanently acquired are all required for the highway improvement works to the A23 London Road, A23 Brighton Road and Longbridge Roundabout, satisfying section 131(5)(a) as land "required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway".~~

~~2.2.102.2.8 The giving of other land in exchange is unnecessary, satisfying section 131(5)(b), because:~~

- ~~■ The plots are required to facilitate the highway improvement works. Once these works have been completed, the widened and improved highways will be adopted by the relevant highway authorities – be that National Highways, Surrey County Council or West Sussex County Council. These entities will also be vested with the requisite land interests. Therefore, as regards the small amount of designated open space currently in highway authority ownership, these landowners will not suffer a net loss in land under their control.~~
- ~~■ As above, it has been communicated to the Applicant by the JLAs that no authority wishes to be vested with the replacement land and they will be satisfied if the land is to vest in (or where already owned by the Applicant, remain vested in) the Applicant provided that the Applicant lays out and maintains suitable replacement open space for the benefit of the public and provides a commitment as regards maintenance of this open space.~~
- ~~■ Article 40 of the Draft DCO (Doc Ref. 2.1) continues to secure the laying out of replacement open space by the Applicant (albeit this is not "replacement land" under section 131(4) of the 2008 Act because it is not to be vested in the entities from which the undertaker is acquiring special category land) and this replacement open space is a suitable replacement for the special category land to be acquired for the benefit of the public, as described in section 4 of this note. The Applicant proposes to provide a total quantity of replacement open space greater than the total quantity of open space land being permanently acquired. Given this and given the minimal recreational use of much of the existing open space proposed to be acquired, the interest of the public in having access to open space will therefore be preserved (and indeed enhanced).~~
- ~~■ As above, the Applicant proposes to provide a total quantity of replacement land greater than the total quantity of open space land being permanently acquired, including that subject to the section 131(5) exception. The interest of the public in having access to open space will therefore be preserved (and indeed enhanced).~~

Open space land over which rights are proposed to be acquired

~~2.2.11~~2.2.9 In respect of rights proposed to be acquired over the western and southern edges of Church Meadows, land south of the A23 Brighton Road and along the southern edge of Riverside Garden Park, section 132(4B) applies. This provides an exception to SPP where open space is "*being acquired for a temporary (although possibly long-lived) purpose*".

~~2.2.12~~2.2.10 Rights are required over these areas to facilitate construction activity on neighbouring plots of land. The rights acquired will allow temporary use of these areas in connection with these activities, whilst the highway improvement works and works to construct the pedestrian bridge over the River Mole to the west of Church Meadows take place. Once construction has concluded, these rights will no longer be necessary.

~~2.2.13~~2.2.11 In respect of additional rights proposed to be acquired over the western and southern edges of Church Meadows for the future maintenance of the pedestrian bridge proposed to be constructed there, section 132(3) applies. This provides an exception to SPP where "*the order land, when burdened with the order right, will be no less advantageous than it was before*" to the persons in whom it is vested, other persons entitled to rights and the public.

~~2.2.14~~2.2.12 These rights would solely facilitate access for periodic inspections and, where necessary, remedial maintenance work to the pedestrian bridge. The infrequency of the exercise of these rights, coupled with the limited disturbance to Church Meadows during times of their exercise, render the parcel of land in question no less advantageous to those holding an interest in the land and the public.

~~2.2.15~~2.2.13 Table 2 at the end of this note summarises the plots of land and the respective provision of section 131 or 132 applicable. Table 3 summarises the plots of land for use as replacement [land open space](#).

2.3. Changes from the submission version of the draft DCO

2.3.1 In the original application submission documents, section 131(4) of the 2008 Act was considered to apply to ~~all of~~ the open space land proposed to be permanently acquired. However, [for the reasons given in Section 2.2 above](#), ~~following further analysis of the current ownership of this land and development of the proposals for the vesting and provision of the replacement land~~, this is no longer considered appropriate ~~for the reasons given in paragraph 2.2.3 above~~.

2.3.2 The application of sections 132(3) and 132(4B) to the proposed acquisition of rights over open space land remains unchanged. The plots of open space land and replacement [land open space](#) forming part of the application, including their size and the design proposals for the replacement [land open space](#), also remain unchanged. The only change is the application of section 131(5) instead of section 131(4) to open space land proposed to be permanently acquired ~~which is currently not in the ownership of RBBC~~.

2.4. References in the draft DCO

2.4.1 The recital at the front of the draft DCO (required to be included by sections 131(3)(b) and 132(2)(b) of the 2008 Act) now reads:

~~"The Secretary of State is satisfied that replacement land (as that term is defined in section 131(12) of the 2008 Act) has been or will be given in exchange for the special category land identified in Part 1A of Schedule 10 to this Order, and that the replacement land has been or will be vested in the person or persons in whom that special category land is vested and subject to the same rights, trusts and incidents as attach to that special category land, and that, accordingly, section 131(4) of the 2008 Act applies in respect of that land;~~

~~"The Secretary of State is satisfied that the special category land identified in Part 1B of Schedule 10 to this Order is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway and the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public, and that accordingly section 131(5) of the 2008 Act applies in respect of that land;~~

~~The Secretary of State is satisfied that rights to be acquired over the land identified in Part 3A of Schedule 10 to this Order will be acquired for a temporary (although possibly long-lived) purpose, and that accordingly section 132(4B) of the 2008 Act applies in respect of that land; and~~

~~The Secretary of State is satisfied that rights to be acquired over the land identified in Part 3B of Schedule 10 to this Order, when imposed on the relevant open space land, will leave that land no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights and the public, and that accordingly section 132(3) of the 2008 Act applies in respect of that land.-"~~

- 2.4.2 The tables specifying the special category land and replacement ~~land~~ [open space](#) in Schedule 10 of the draft DCO were also updated accordingly. These changes are noted in the **Draft Development Consent Order – Schedule of Changes** ([Doc Ref. 2.1](#)) ~~[REP1-005]~~.

3 Approach to securing the provision of replacement ~~land~~ [open space](#)

3.1. DCO provisions

- 3.1.1 As above, the Applicant is committed to providing replacement open space in respect of all special category land proposed to be compulsorily acquired. Therefore, article 40 (special category land) of the draft DCO provides that:

- the special category land proposed to be acquired (identified in Part 1 of Schedule 10 to the draft DCO) cannot vest in the undertaker until the undertaker has (i) acquired any of the ~~replacement~~ land [to be laid out as replacement open space](#) identified in Part 2 of Schedule 10 not already in its ownership and (ii) submitted to Crawley Borough Council ("**CBC**") (in consultation with RBBC and Mole Valley District Council ("**MVDC**")) for approval a replacement open space delivery plan which sets out the timetable for the submission of landscape and ecology management plans (pursuant to requirement 8) for the ~~replacement~~ land [to be laid out as replacement open space](#) and the laying out of each part of the ~~replacement land~~ [this land as such](#) ~~as open space~~;
- the undertaker must implement the open space delivery plan as approved; and

- ~~once the replacement land is laid out and provided in accordance with that plan, it will vest in RBBC.~~ [suitable arrangements must be made for the ongoing maintenance of the relevant replacement open space in the accordant landscape and ecology management plan \(or otherwise\)¹.](#)

- 3.1.2 As a result of this article, the undertaker cannot acquire any special category land until it has the means to provide all identified replacement [open space land](#) and has submitted and had approved a plan setting out the timetable for doing so.
- 3.1.3 Previous versions of the draft DCO provided for the submission of an open space *management* plan which itself had to be substantially in accordance with the outline landscape and ecology management plan ("**OLEMP**"). However, it has always been the case that requirement 8 of the draft DCO has required the submission and approval of a detailed landscape and ecology management plan ("**LEMP**") for a part of the authorised development prior to the commencement of that part. These plans must be substantially in accordance with the OLEMP, as per requirement 8. Therefore, the plan to be submitted and approved under article 40 does not, itself, need to be substantially in accordance with the OLEMP (as it would then duplicate the role of a LEMP) but should provide a timetable for the delivery of the replacement open space, including a commitment on the timing for submission of LEMPs for that land.

3.2. Justification for approach

- 3.2.1 The LPAs had initially queried whether the vesting of special category land in the undertaker could precede the laying out of the replacement open space. The Applicant understands that the lawfulness of this approach is now accepted in principle, but for the avoidance of doubt explains the position as follows.
- 3.2.2 Such an approach is necessary for the Project because the special category land to be acquired is essential for the carrying out of the highway works and its acquisition cannot await the completion of those works. However, the construction of the highway works also utilises land that will eventually form part of the replacement open space or proposed maintenance and footpath accesses to the replacement open space and it is therefore not possible to establish and provide access to the replacement open space in advance of the highway works.
- 3.2.3 In particular, the northern part of Car Park B is required as a construction compound for the highway works and the rest of this area is required for use as a construction access to carry out works to the carriageway in the vicinity of the Airport Way railway bridge.
- 3.2.4 Section 131 of the 2008 Act indicates that replacement land need not be laid out before special category land can be acquired pursuant to a DCO. Section 131 allows for an order to authorise the compulsory acquisition of such land without the need for special parliamentary procedure provided that the Secretary of State is satisfied that, inter alia, "*replacement land has been **or will be given** in exchange for the order land*" (emphasis added).
- 3.2.5 The approach adopted in article 40 of the draft DCO (set out above in 3.1.1 and 3.1.2) is preceded in several recently made DCOs. Article 45 of the Chelmsford to A120 Widening

¹ [The wording on maintenance being in materially the form proposed by the Examining Authority in its Proposed Schedule of Changes to the draft DCO \[PD-028\]](#).

Development Consent Order 2024, article 38 of the A38 Derby Junctions Development Consent Order 2023 and article 34 of the A303 (Amesbury to Berwick Down) Development Consent Order 2023 all allow the acquisition of special category land once the Secretary of State (in consultation with the relevant planning authority) has certified that a scheme for the provision of the replacement land as open space and a timetable for the implementation of the scheme has been received from the undertaker. In each case the scheme need not have been laid out prior to acquisition of the special category land, as for the Applicant's approach.

3.2.6 Article 39 of the A417 Missing Link Development Consent Order 2022 adopted the same approach because the replacement land for that project could only be provided after the construction period for the main works. The Examining Authority in that examination concluded that:

"We... are satisfied that the Replacement Common Land complies with the definition contained in s131(12) of the PA2008... notwithstanding the fact that it could not be provided until after the Proposed Development has been constructed." (ExAR, paragraphs 8.8.19–21)

3.2.7 Whilst, as explained in this note, the Applicant is not providing formal "replacement land" for the purpose of section 131(4) of the 2008 Act due to the JLAs not wishing to be vested with that land, the Applicant considers the above analysis and precedent in this Section 3.2 to apply by analogy to its laying out of replacement open space, given that the provision of that replacement open space partly underpins the conclusion that the "giving in exchange of other land is unnecessary" for the purpose of section 131(5) of the 2008 Act, on which the Applicant does rely.

4 Adequacy of the proposed replacement ~~land~~open space

4.1. Scope of this section

4.1.1 This section provides an explanation of the strategy that has been developed for the provision of replacement ~~land~~open space and the alternatives considered and brings together information provided in the Environmental Statement, Planning Statement and Statement of Reasons. It is set out as follows:

- Legislation and policy (Sections 4.2, 4.3)
- Overview of special category land affected by the Project (Section 4.4)
- Details of the replacement ~~land~~open space (Sections 4.5 – 4.8)

4.2. Legislation

4.2.1 Section 131(12) of the 2008 Act provides that:

"replacement land" means land which is not less in area than the order land and which is no less advantageous to the persons, if any, entitled to rights of common or other rights, and to the public."

4.2.2 Whilst, as explained above in Section 2.2, the Applicant is no longer relying on the provision of "replacement land" under section 131(4) of the 2008 Act to which this definition applies, the drafting remains useful as a benchmark of what replacement open space should constitute.

4.3. Policy

The Airports National Policy Statement (ANPS), June 2018

4.3.1 The ANPS states at paragraph 112 that:

“Existing open space, sports and recreational buildings and land should not be developed unless the land is no longer needed or the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. If the applicant is considering proposals which would involve developing such land, it should have regard to any local authority’s assessment of need for such types of land and buildings.”

The National Networks National Policy Statement (NNNPS), March 2024

4.3.2 The NNNPS states at paragraph 5.194:

“The Secretary of State should also consider whether mitigation of any adverse effects on green infrastructure or open space is adequately provided for by means of any planning obligations, for example, to provide an exchange of land between two owners and provide for appropriate management and maintenance agreements. Any exchange land should be at least as good in terms of size, usefulness, attractiveness, quality and accessibility. Alternatively, where sections 131 and 132 of the Planning Act apply, any replacement land provided under those sections will need to conform to the requirements of those sections.”

The National Planning Policy Framework, December 2023

4.3.3 The following paragraphs contain relevant policy:

“Open space and recreation

102. Access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities, and can deliver wider benefits for nature and support efforts to address climate change. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, sport and recreational provision is needed, which plans should then seek to accommodate.

103. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or

b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

104. Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails."

Reigate and Banstead Development Management Plan, September 2019

4.3.4 The current designated open space affected by the Project lies within an area of RBBC Urban Open Space. Policy OSR1: Urban Open Space states that:

"For designated Urban Open Space:

1. Proposals which directly complement and enhance the value and use of the Urban Open Space for recreation, biodiversity and/or nature conservation will be looked upon favourably provided that the predominant open character of the space is maintained.

2. Any other development which would result in the full or partial loss of designated Urban Open Space will only be permitted in exceptional circumstances, where any loss of openness resulting from the proposed development would not have an adverse effect on local character, visual amenity or ecological value; and either:

a. There is clear evidence to demonstrate that the site is surplus to requirements and does not make a significant contribution to the recreational, community, ecological or amenity value of the area;

b. Provision is made for appropriate and suitably located replacement open space of the same type and of at least equivalent quality and/or quantity. Replacement open spaces should be located as close to the lost open space as possible;

c. The proposal is for alternative sports and recreational provision which clearly outweighs the loss of the open space; or

d. The proposal is for the expansion of an existing school, the need for which clearly outweighs the loss of the urban open space.

3. Planning conditions and/or obligations will be used to secure the timely delivery of any agreed enhancements or alternative provision."

4.4. Areas of special category land affected by the Project

4.4.1 The **Special Category Land Plans (Doc Ref. 4.4 v4)** ~~(REP3-010)~~ show:

- current special category land (open space) to be permanently acquired in orange;
- current special category land (open space) over which rights will be acquired in turquoise; and
- ~~replacement land for special category land being permanently~~ land to be laid out as replacement open space ~~acquired~~ in green.

Special category land to be permanently acquired

Riverside Garden Park boundary

- 4.4.2 The permanent acquisition of approximately 1.01 ha of designated open space land is proposed along the southern boundary of Riverside Garden Park as part of highway improvements at the North Terminal where a new junction layout would be provided including partial grade separation. The Airport Way eastbound connection from the North Terminal roundabout would be removed with eastbound traffic to travel via a new signal-controlled junction on the A23 London Road and an enhanced eastbound diverge connection onto Airport Way.
- 4.4.3 Riverside Garden Park, which forms part of the Riverside Garden chain, comprises open space bounded to the north by the Gatwick Stream and features areas of woodland and a man-made lake. Despite the proximity of the A23 and the airport, these features are largely screened from view by embankments and tree planting. Horley Town Council describes Riverside Garden Park as being a favourite local dog walking venue, with fishing popular along the Gatwick Stream and around the lake. In addition, cyclists use NCR 21 to get to and from Gatwick Airport.
- 4.4.4 The open space land being permanently acquired in this location comprises a long thin strip along the length of the park. Approximately 0.67 ha of this area comprises land that currently forms the highway embankment with toe ditch. This land does not form part of the useable area of recreational space in the park. However, it is shown as part of the designated urban open space in the RBBC dataset and therefore, whilst the land does not function as recreational open space, on a precautionary basis the area is still included as open space to be permanently acquired. The area of land affected within Riverside Garden Park, not including land within the highways boundaries, comprises a smaller thin strip of approximately 0.34ha.

South of A23 Brighton Road

- 4.4.5 A small area of land would also be permanently acquired to the north of the confluence of the River Mole and Gatwick Stream, located to the south of the A23 Brighton Road. This is to facilitate highway improvement works to widen the existing segregated left turn lane from the A23 Brighton Road southbound into the A23 London Road eastbound along with the associated structures supporting this section of the highway and to incorporate a shared use path heading east from the roundabout.

This is a wooded area that cannot be accessed from the main area of Riverside Garden Park, being separated by the River Mole. This area can only be accessed by using a pedestrian gate located next to the A23 Brighton Road and negotiating a steep earth bank to reach an area of wooded land adjacent to the River Mole (see Figure 1). Within this area, there would be a permanent loss of approximately 0.02 ha alongside the A23 Brighton Road.

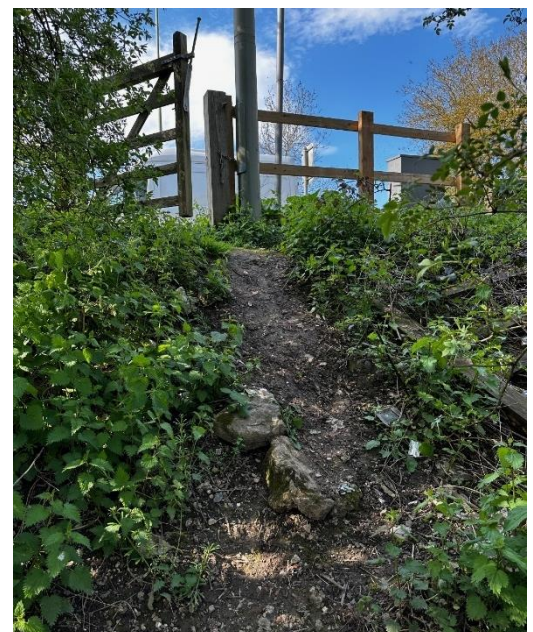


Figure 1

Church Meadows

- 4.4.6 An area directly to the north of the A23 Brighton Road along the southern edge of Church Meadows would be permanently acquired to facilitate works to the Longbridge Roundabout to increase its diameter and accommodate wider circulating lanes, enhance its active travel infrastructure and improve exit and entry lanes.
- 4.4.7 Church Meadows also forms part of the Riverside Green Chain and mainly comprises an open area of grassland bounded by the A23 Brighton Road to the south, the River Mole to the west and the boundary of St Bartholomew's Church to the north east.
- 4.4.8 The works to Longbridge Roundabout would permanently impact an area of approximately 0.13 ha on the southern part of the open space at Church Meadows, comprising an area of scrub and trees along the edge of the area of mainly grassed open space.

Special category land over which rights will be acquired

Riverside Garden Park boundary

- 4.4.9 Beyond the strip of land proposed to be permanently acquired for the highway improvements to the A23 London Road, during the construction of these works an additional thin strip of land of approximately 0.47 ha would be required to be used temporarily for construction activities.
- 4.4.10 It is not proposed to permanently acquire this land, but instead to acquire rights over it to facilitate this temporary construction use. Replacement open space for this strip is not required to be provided under section 132(4B) of the 2008 Act because rights would be acquired over this land *"for a temporary (although possibly long-lived) purpose"*.

South of A23 Brighton Road

- 4.4.11 A small area of land to the south of the parcel proposed to be permanently acquired south of the A23 Brighton Road and north of the confluence of the River Mole and Gatwick Stream would also be temporarily used to facilitate construction activities in the neighbouring parcel.
- 4.4.12 This area is separated from the main area of Riverside Garden Park by the River Mole and cannot be accessed from the main area of Riverside Garden Park. Within this area, approximately 0.01 ha would be temporarily affected by construction activities. Replacement open space for this small area is not required to be provided under section 132(4B) of the 2008 Act because rights would be acquired over this land *"for a temporary (although possibly long-lived) purpose"*.

Church Meadows

- 4.4.13 Beyond the strip of land in the south of Church Meadows proposed to be permanently acquired for the improvement works to Longbridge Roundabout, during these works and in connection with the provision of replacement open space to the west of Church Meadows, an additional strip of land of approximately 0.36 ha would be temporarily affected by construction activities.
- 4.4.14 Works to the Longbridge Roundabout are anticipated to commence in 2029. During these works an area along the southern edge of Church Meadows would be required to facilitate the highway improvement works. Replacement open space for this strip is not required to be provided under

section 132(4B) of the 2008 Act because rights would be acquired over this land *"for a temporary (although possibly long-lived) purpose"*.

4.4.15 Additionally, an area of land along the western edge of Church Meadows, adjacent to the River Mole, would be required to be used temporarily for the construction of a new pedestrian bridge to connect Church Meadows to the replacement open space proposed to the west of the River Mole. Powers are sought in the draft DCO for the Project over an area along the length of the River Mole to provide flexibility in identifying the most appropriate location for the pedestrian bridge during detailed design. Once constructed, rights may need to be retained by GAL in order to inspect and maintain the bridge, depending on the arrangement agreed with the relevant local planning authority.

4.4.16 Replacement open space is not required in respect of the rights to construct the bridge because under section 132(4B) of the 2008 Act the rights would be *"for a temporary (although possibly long-lived) purpose"*. Neither is it required in respect of the potential lasting rights for periodic maintenance because under section 132(3) of the 2008 Act the area when burdened with those rights *"will be no less advantageous than it was before"* to persons in whom it is vested, those entitled to rights over it and the public.

4.5. Development of the replacement ~~land open space~~ proposal

4.5.1 In respect of the special category land proposed to be permanently acquired (detailed above), the Applicant will provide replacement ~~land open space~~ in exchange. The Applicant has therefore conducted an extensive exercise to identify parcels of land best suited for use as replacement open space.

Consideration of alternatives

4.5.2 Although the areas of open space affected by the Project form part of the same Riverside Green Chain designated by RBBC, they comprise separate discrete areas of land within this designation.

4.5.3 A range of potential options for replacement open space were considered and their locations are shown indicatively on Figure 2 below (overleaf) (which is an overlay of Figure 19.8.1 in [APP-058]). All are in relatively close proximity to the open space to be lost, in recognition of RBBC Policy OSR1.

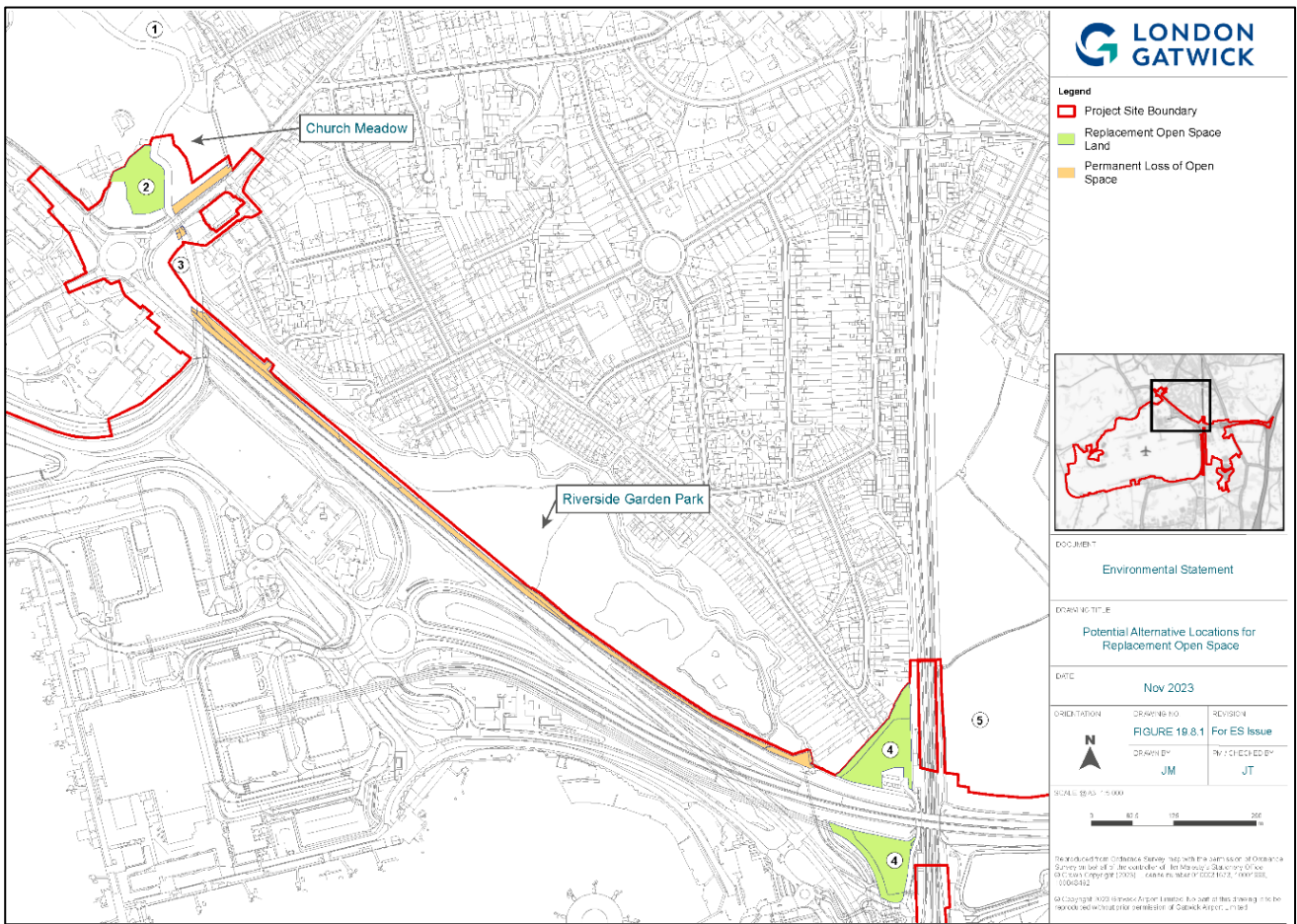


Figure 2

4.5.4 The options considered were:

1. Provision of land to the north of Church Meadows but to the east of the River Mole
2. Land to the west of the River Mole, north of the A23 Brighton Road
3. Land to the south of the A23 Brighton Road immediately to the south-east of the Longbridge Roundabout
4. Land in Car Park B to the north and south of the A23 London Road
5. Land to the east of the London to Brighton Railway, north of the A23 London Road

4.5.5 Options 1, 3 and 5 were discounted for the following reasons:

Option 1

4.5.6 This option was discounted as the land to the north of the existing Church Meadows already forms part of the RBBC Riverside Garden Chain, which is already designated open space, and therefore would not be able to be used as new replacement open space.

Option 3

4.5.7 This small area of land is isolated and landlocked from any other areas of useable land, bounded by roads and the River Mole. Unlike the Applicant's selected replacement [land open space](#), where the provision of a new bridge over the River Mole and a new linking footway can be provided, the Option 3 area cannot feasibly be linked to other existing open spaces in the same way due to the limited area available in which to locate new linking infrastructure, which would have to be through the provision of a significant bridge structure over the River Mole. The access into the existing strip of open space alongside the west bank of the River Mole is also unsuitable for public access, which is currently provided via a gate that leads to the steep earth bank shown in Figure 1 above.

4.5.8 This area therefore does not form an area of land accessible or contiguous to the main areas of Riverside Garden Park and Church Meadows affected by the Project and has therefore been discounted.

Option 5

4.5.9 This was discounted as it is identified for development as the Horley Business Park to the west of Balcombe Road in RBBC's Development Management Plan (HOR9). It is also located approximately 250m to the east of the edge of Riverside Garden Park and is physically separated from the existing open space by the airport's Car Park B and the railway line.

Options 2 and 4

4.5.10 The options to provide replacement open space in Car Park B (Option 4) and to the west of the River Mole, north of Longbridge Roundabout (Option 2) were therefore selected and taken forward.

4.6. Selected replacement [land open space](#)

4.6.1 The replacement [land open space](#) is part of the integrated design for the Project and comprises the following areas.

- approximately 1.43 ha of land within the existing areas of Car Park B to the north and south of the A23 London Road; and
- approximately 0.52 ha of land to the west of the River Mole north of Longbridge Roundabout.

4.6.2 As per section 131(12) of the 2008 Act, replacement land must be *"not less in area than the [land being permanently acquired] and which is no less advantageous to the persons, if any, entitled to rights of common or other rights, and to the public"*. [Again, whilst this definition is not determinative on the Applicant's revised approach, the Applicant acknowledges that whether replacement open space is suitable has](#) ~~There are therefore~~ both quantitative and qualitative considerations.

Quantitative comparison

4.6.3 The areas of open space to be permanently acquired for the Project and replacement [land open space](#) are summarised in Table 1 below.

Table 1

Location	Permanent acquisition (ha)	Replacement <u>land open space</u> (ha)
Riverside Garden Park	1.01	
<i>(of which, useable recreational space)</i>	<i>(0.34)</i>	
Area to north of Riverside Garden Park	0.02	
Church Meadows	0.13	
Car Park B (north and south)		1.43
Land west of the River Mole, north of Longbridge Roundabout		0.52
Total area (ha)	1.16	1.95

4.6.4 The quantum of replacement land open space proposed to be provided is therefore 0.79 ha greater than the area of open space to be permanently acquired for the Project (a 68% increase) and therefore is fully in accordance with ANPS paragraph 112, NNNPS paragraph 5.194 and RBBC OSR1 in terms of the area of replacement open space to be provided. Whilst the quantum of replacement land open space required to replace the total open space permanently acquired could be provided within the areas of Car Park B alone, such land would only be in proximity to Riverside Garden Park and not to Church Meadows.

4.6.5 Church Meadows forms a separate discrete area of open space, located approximately 1.3km from the areas of Car Park B and separated from Riverside Garden Park by the River Mole and the A23 Brighton Road. Therefore, suitable replacement land open space for the permanent acquisition of open space in Church Meadows has been developed additionally in order to provide useful and accessible replacement land open space to the communities in this area.

Quality

4.6.6 In addition to the replacement land open space being greater in size than the open space land being permanently acquired and geographically situated to ensure beneficial replacement, the nature of the replacement areas has been carefully considered to provide spaces of equal or higher quality to the areas being permanently acquired.

4.6.7 Concept designs for the replacement open space areas in Car Park B and the land to the west of the River Mole north of Longbridge Roundabout have been developed to incorporate the following landscaping principles:

- The location of open space should be easily accessible by all groups of people, including those with disabilities. The design of the space should also consider the needs of different groups of people, such as families with children, older adults, and people with disabilities.

- The activities and amenities provided in the open space should be versatile and suitable for different age groups and interests. For example, the space could include areas for sports, playgrounds, seating areas, and green spaces for picnics and relaxation.
- There should be footpath connections between the existing areas of open space in Riverside Garden Park and Church Meadows and replacement areas in Car Park B and to the west of the River Mole adjacent to Church Meadows.
- Woodland, scrub and species-rich grassland should be created within Car Park B to provide an extension of Riverside Garden Park.
- New habitats should be created within a newly created mitigation area north-east of Longbridge Roundabout comprising woodland, scrub and tree planting and species-rich, wet and dry grassland creation.
- Marginal planting will also be introduced around new attenuation ponds.

4.6.8 Concept design sketches for the two areas were submitted as figures 1.2.2 and 1.2.3 to the **Outline Landscape and Ecology Management Plan** [[REP3-031](#)], excerpted as Figure 3 and Figure 4 below.

Car Park B

- 4.6.9 The concept design for the areas in the current Car Park B includes a new footpath link from Riverside Garden Park into the replacement open space, which would comprise a similar mix of woodland areas and accessible grassland areas as currently exist in Riverside Garden Park, together with the provision of seating areas to provide areas of a similar quality to the existing park and to provide equally usefully spaces and facilities.
- 4.6.10 The development of this replacement open space offers the opportunity to provide new links into Riverside Garden Park from the existing promoted Sussex Border Path route that runs north/south along the western edge of the London to Brighton Railway, increasing accessibility to existing linkages. The quality of the route of the Sussex Border Path would also be improved through the removal of car park fencing in this area, with the opportunity to incorporate the route into the detailed landscape proposals to be developed for the Car Park B areas.

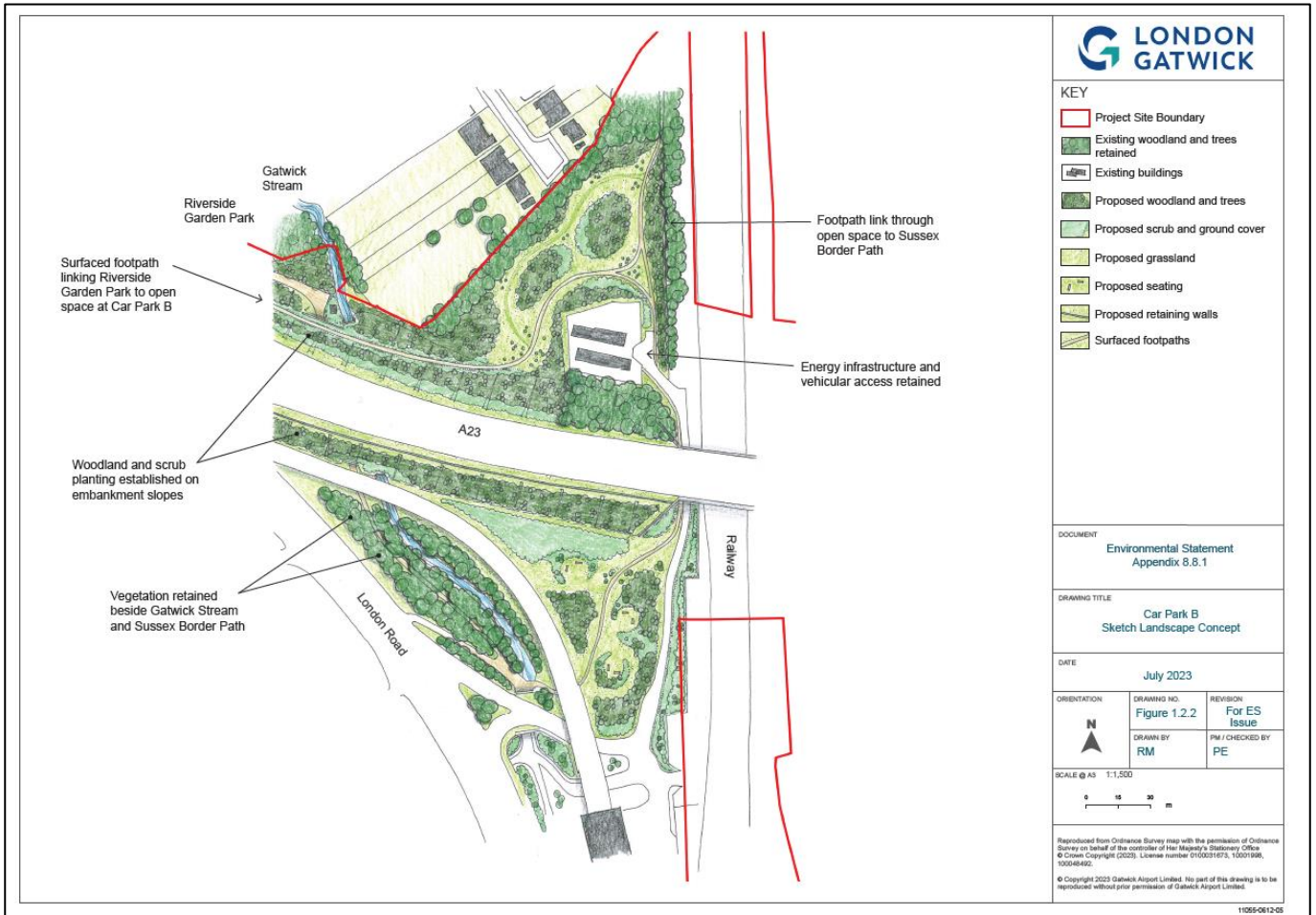


Figure 3: Car Park B concept design

Land west of the River Mole, north of Longbridge Roundabout

4.6.11 The concept design for the area to the west of the River Mole incorporates the attenuation feature required as part of the highway improvement works adjacent to Longbridge Roundabout, together with a mixture of woodland, scrub and grassland habitat to provide useable, high quality replacement open space. It would be linked to the existing area of Church Meadows by a new timber pedestrian bridge over the River Mole. A pedestrian gate would also be provided close to the entrance to Dairy Farm, at the southwestern corner of the attenuation feature. Together, these would increase accessibility into the combined open spaces west and east of the River Mole.



Figure 4: land west of the River Mole concept design

4.7. Delivery of the replacement ~~land~~open space

Timing for delivery

4.7.1 The replacement open space would be established towards the end of the construction phase for the highway improvements. The indicative sequencing for these highway works, contained in Table 1 of the **Buildability Report Part B** [APP-081] is as follows:

Highways Indicative Sequence	Construction Activity
2028	Early works, including the establishment of compounds, fencing, early clearance, and diversion works and re-provision of essential replacement services
2028-2031	Longbridge Roundabout improvements
2029-2031	North Terminal Roundabout improvements
2029-2031	South Terminal Roundabout improvements

2031	Completion of Surface Improvements
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Car Park B

4.7.2 At Car Park B the replacement open space cannot be established in advance of the acquisition of the fringe of land in Riverside Garden Park as the northern part of Car Park B is required as a construction compound and the other areas will be required for construction access to carry out the construction works to the carriageway in the vicinity of the Airport Way railway bridge. However, the loss of the land on the southern fringe of the park, which mainly comprises the highway embankment, would not restrict the continued use of the main recreational space in the park, with the main access to the park from Crescent Way and car parking facilities maintained throughout the construction period.

4.7.3 The works required to establish the replacement open space in the areas of Car Park B would require more extensive works than those within the area to the west of the River Mole. Following the completion of the highway construction works, including the provision of the new footway access from Riverside Garden Park to the Car Park B area, the car parking surface would be removed, followed by ground preparation, seeding and landscape planting works. Whilst access to the area would be provided as soon as possible to the public following the completion of the highway works, it is anticipated that the quality of the open space provision in this area would take longer to mature than the area west of the River Mole, reflecting that this is currently a developed piece of land. However, once the planting is fully established and matures over time as part of the agreed management plan, the areas of Car Park B would provide larger areas of accessible open space providing enhanced access to the Sussex Border Path, compared to the loss of open space within Riverside Garden Park along a narrow strip of predominantly highways embankment planting.

Land west of the River Mole, north of Longbridge Roundabout

4.7.4 At Longbridge Roundabout, the construction of the attenuation pond and establishment of the open space to the west of the River Mole would be provided towards the end of the highway improvement sequence. The provision of the pedestrian access bridge would also be completed during this phase.

4.7.5 The construction of the highway works utilises land that would eventually form part of the replacement open space or where proposed maintenance and footpath accesses to the open space would be provided. It would therefore not be possible to establish and provide access to the proposed replacement open space in advance of the highway works. However, the location of the works on the southern edge of the existing Church Meadows would not restrict the continued use of the main area of Church Meadows during the construction period, albeit within a slightly reduced area.

4.7.6 The land proposed for replacement open space west of the River Mole currently comprises agricultural grassland. The existing land use within this area would help to facilitate early landscape establishment into the in-situ soils and enable the public to begin to enjoy the space once the access to the area is established across the footbridge.

Securing delivery

- 4.7.7 The delivery of the replacement [land-open space](#) is secured by virtue of article 40 (special category land) of the draft DCO and the open space delivery plan to be submitted and approved, as described above in Section 3.

Maintenance

- 4.7.8 The required ongoing maintenance of the replacement [land-open space](#) will be set out in detail in the relevant LEMPs which are subject to the approval of CBC under requirement 8 of the draft DCO and which must be complied with pursuant to that requirement. [At Deadline 9, further to the recommendation of the ExA in its Proposed Schedule of Changes to the draft DCO \[PD-028\], the Applicant made specific provision as regards maintenance of replacement open space in article 40\(6\) of the draft DCO \(Doc Ref. 2.1\).](#)
- ~~4.7.9 A maintenance contribution for the Church Meadows replacement open space has been included in the draft DCO s106 Agreement [REP2-004] but the practicalities regarding responsibility to deliver the ongoing maintenance is subject to continuing discussions between the Applicant and the JLAs.~~

4.8. Summary – replacement [land-open space](#)

- 4.8.1 In summary, the Project includes the provision of a significantly larger area of open space compared to the area that would be permanently acquired for Project works. The areas of replacement [land-open space](#) would be located on the closest available areas of land to those that are to be acquired so that they would be accessible to the communities that the current open space serves. Accessibility to the replacement [land-open space](#) would be maintained through the provision of a new footpath link from Riverside Garden Park to Car Park B and also the provision of a pedestrian footbridge from Church Meadows into the land to the west of the River Mole. In addition, the provision of the replacement [land-open space](#) in Car Park B provides the potential to improve the accessibility to and the quality of the Sussex Border Path where it currently runs along the western boundary of the London to Brighton railway line.
- 4.8.2 The concept designs for the areas of replacement [land-open space](#) illustrate how these areas would be developed incorporating biodiversity, landscaping and health and wellbeing objectives, to enable the use of the existing open space to be extended into the areas of replacement [land-open space](#), incorporating suitable planting, provision of paths, access and signage. The quality of the spaces would develop over time as the landscaping matures, with the establishment process anticipated to take longer within the Car Park B areas than within the land west of the River Mole, where the quality could be established early, due to the nature of the existing agricultural land.
- 4.8.3 The ~~replacement land~~ proposals therefore overall provide replacement open space, once fully established, that is equivalent or better in terms of size, accessibility, usefulness, attractiveness and quality and should therefore be considered to be acceptable in terms of national and local planning policy.

Table 2: special category land to be acquired or over which rights are to be acquired

Plot Number	Owner	Occupier	Acquiring	Justification
1/053	Reigate and Banstead Borough Council		Land	s.131(5) (required for highway widening) s.131(4) (replacement land provided)
1/226A	Reigate and Banstead Borough Council		Land	s.131(5) (required for highway widening) s.131(4) (replacement land provided)
1/096	Reigate and Banstead Borough Council	National Highways	Land	s.131(5) (required for highway widening) s.131(4) (replacement land provided)
1/165	Reigate and Banstead Borough Council		Land	s.131(5) (required for highway widening) s.131(4) (replacement land provided)
1/070	Reigate and Banstead Borough Council		Land	s.131(5) (required for highway widening) s.131(4) (replacement land provided)
1/094	Reigate and Banstead Borough Council		Land	s.131(5) (required for highway widening) s.131(4) (replacement land provided)
1/166	Reigate and Banstead Borough Council		Land	s.131(5) (required for highway widening) s.131(4) (replacement land provided)
1/071	Reigate and Banstead Borough Council		Land	s.131(5) (required for highway widening) s.131(4) (replacement land provided)
1/095	Reigate and Banstead Borough Council	West Sussex County Council	Land	s.131(5) (required for highway widening) s.131(4) (replacement land provided)
1/008	Reigate and Banstead Borough Council		Land	s.131(5) (required for highway widening) s.131(4) (replacement land provided)
1/243	National Highways	National Highways	Land	s.131(5) (required for highway widening)
1/211	National Highways	National Highways	Land	s.131(5) (required for highway widening)
1/105	National Highways	National Highways	Land	s.131(5) (required for highway widening)
1/139	National Highways	National Highways	Land	s.131(5) (required for highway widening)
1/038	Surrey County Council		Land	s.131(5) (required for highway widening)

1/047	Surrey County Council		Land	s.131(5) (required for highway widening)
1/039	Surrey County Council		Land	s.131(5) (required for highway widening)
1/059	Unknown		Land	s.131(5) (required for highway widening)
1/020	Unknown		Land	s.131(5) (required for highway widening)
1/150	West Sussex County Council	National Highways	Land	s.131(5) (required for highway widening)
1/007	Reigate and Banstead Borough Council	Surrey County Council	Rights over land	s.132(3) (burdened land no less advantageous)
1/212	National Highways	National Highways	Rights over land	s.132(4B) (rights being acquired for temporary purpose)
1/242A	National Highways	National Highways	Rights over land	s.132(4B) (rights being acquired for temporary purpose)
1/164	Reigate and Banstead Borough Council		Rights over land	s.132(4B) (rights being acquired for temporary purpose)
1/050	Reigate and Banstead Borough Council		Rights over land	s.132(4B) (rights being acquired for temporary purpose)
1/036	Reigate and Banstead Borough Council		Rights over land	s.132(4B) (rights being acquired for temporary purpose)
1/226	Reigate and Banstead Borough Council		Rights over land	s.132(4B) (rights being acquired for temporary purpose)
1/093	Reigate and Banstead Borough Council		Rights over land	s.132(4B) (rights being acquired for temporary purpose)
1/052	Unknown		Rights over land	s.132(4B) (rights being acquired for temporary purpose)

Table 3: land to be ~~used~~ laid out as replacement ~~land~~ open space

Plot Number	Owner	Occupier	Acquiring	Justification
1/292	Gatwick Airport Ltd		Land	For use as replacement land <u>open space</u>
1/200	Gatwick Airport Ltd		Land	For use as replacement land <u>open space</u>

1/289	Gatwick Airport Ltd		Land	For use as replacement open space land
1/220	Gatwick Airport Ltd		Land	For use as replacement open space land
1/290A	Gatwick Airport Ltd		Land	For use as replacement open space land
1/013	Surrey County Council		Land	For use as replacement open space land